

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
	)	
v.	)	CRIMINAL NO. 05-30042-MAP
	)	
	)	
RICARDO DIAZ,	)	
and	)	
CESAR CRUZ,	)	
Defendants.	)	

THE GOVERNMENT'S AND THE DEFENDANTS' STATUS  
REPORT PURSUANT TO LOCAL RULE 116.5(A)

The United States of America, by Michael J. Sullivan, United States Attorney for the District of Massachusetts, Attorney Terry Nagel, counsel for Ricardo Diaz, and, Attorney Joseph Franco, counsel for Cesar Cruz, hereby submit the following status report pursuant to Local Rule 116.5(A) and Magistrate Judge Neiman's written orders.

1. The Government has provided or made available all of its discoverable information. The government has agree to order transcripts from the recordings of the consensual telephone calls in this case. The government will provide the transcripts upon receipt.

2. The parties do not anticipate additional discovery as the result of future receipt of information.

3. The defendants do not intend to raise a defense of insanity or public authority.

4. The government has requested notice of alibi by the

defendants. Attorney Franco will notify the government as to this issue upon further review of the discovery and receipt of the transcripts from the consensual telephone calls.

5. The Defendants have not yet filed but may file, a motion to dismiss, or suppress, or other motion requiring a ruling by the District Court before trial pursuant to Fed. R. Crim. Pro. 12(c).

6. The parties request this Court to set a date for a further status. Both counsel have experienced technical difficulties in accessing the DVD recording provided by the government. As of October 3, 2005, Attorney Franco has had recent success accessing the recording. Attorney Nagel may not have the requisite computer drive, and has made an appointment with the undersigned Assistant U.S. Attorney to review the DVD recording. Counsel need addition time to review the recordings with their respective clients and to prepare pretrial motions. In light of the above, the parties request a further status date. The parties also request this court exclude the delay from August 2, 2005 through the next hearing date (to be scheduled on October 5, 2005) from the Speedy Trial Act in the interests of justice pursuant to 18 U.S.C. Section 3161(h)(8)(A) and Local Rule 112.2(A)(1),(2), and (3). Accordingly, the government requests that the Court issue an order indicating that the time from initial appearance to the present is excludable pursuant to Local Rule 112.2(B).

7. It is premature to notify the Court as to whether either of the Defendants will decide to change his plea.

8. In the event that a trial is necessary the trial will last approximately 3 days.

9. A date convenient with the Court should be established for a final status conference.

Filed this 4<sup>th</sup> day of October, 2005.

Respectfully submitted,

MICHAEL J. SULLIVAN  
United States Attorney

By: /s/ Paul Hart Smyth

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Paul Hart Smyth  
Assistant U.S. Attorney

/s/ Joseph Franco  
Attorney Joseph Franco  
Counsel for Cesar Cruz

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Attorney Terry Nagel  
Counsel for Ricardo Diaz